

REMARKS

Reconsideration of the present application is respectfully requested. Claims 1, 5-26 and 28-30 remain pending. No claims have been amended, canceled or added in this response.

Status of Claims

Claims 14-19 stand rejected under 35 U.S.C. § 102(b) based on Ellipsus White Paper -- InfiniteMAP™ ("Ellipsus"). Claims 1, 5, 6, 9, 10 and 23-30 stand rejected under 35 U.S.C. § 103(a) based on Ellipsus. Claims 1-30 stand provisionally rejected for obviousness-type double patenting based on co-pending U.S. patent application 10/600,746.

Interview Summary

On 7/14/2006 Applicants' representative (the undersigned) discussed the present application with the Examiner's supervisor, George Eng (due to the Examiner's extended absence from the USPTO). Applicants' representative explained Applicants' position, set forth in Applicants' previous response and further explained below, that the prior art rejections are completely without merit, both substantively (claim 1 was discussed) and in regard to the Examiner's challenge to the form of Applicants' previous arguments. No agreement was reached regarding any claims.

Double-Patenting Rejection

Applicants acknowledge the provisional obviousness-type double patenting rejection. Since this type of rejection can be overcome by terminal disclaimer, and

since no claims in the present application have yet been indicated as otherwise reciting allowable subject matter, Applicants respectfully request that they be allowed to defer their response to this basis of rejection until the present application is otherwise found to be in condition for allowance.

Prior Art Rejections

Applicants respectfully traverse the prior art rejections. Applicants respectfully submit that the prior art rejections are completely without merit, as fully explained in Applicants' previous responses (see Amendment filed on 9/30/05, pp. 12-16 and Amendment filed on 2/21/2006, pp. 3-7).

Applicants will first reiterate the substance of their arguments and then (below) will address the most recent remarks by the Examiner (responsive to Applicants' most recent arguments) in the present Final Office Action.

Before discussing the cited references, however, a brief overview of the present application may be helpful. The present invention is directed to solving various problems associated with the previously-existing processes by which wireless services subscribers could purchase or license digital products designed for use in wireless communication devices (e.g., games and other applications, ring tones, wallpapers, etc.) for use on their mobile devices (e.g., cell phones, PDAs, etc.). The invention is also directed to a process by which multiple digital product providers can make their digital content available ("publish") simultaneously to various wireless services subscribers and improving the ability to manage those published digital products. In certain embodiments, the invention is implemented in a download manager which is

operatively coupled between a wireless telecommunications network and a wireline network (e.g., the Internet).

The aforementioned goals are achieved, at least in part, by defining in a server system a plurality of “domains” which have special characteristics. The use of domains *which have the specific characteristics recited in Applicants’ claims* is a significant aspect of the present invention’s highly efficient technique of digital content publication, management, and delivery. Specifically, each domain represents a different subset of a plurality of wireless services subscribers, where each subset includes a plurality of subscribers. Further, *each domain* represents a *billing relationship* between a business entity and the corresponding subset of the plurality of wireless services subscribers, *and*, the plurality of domains represent a *partitioning of content designed for use in wireless communication devices, for purposes of making the content available to the wireless services subscribers*. For example, a wireless services subscriber may only have access to the digital products that are published for his domain; or, a particular digital product supplier may only be authorized to publish and manage content for some domains but not others.

Claim 1, for example, recites:

1. (Currently amended) A method of providing access to content for use in wireless communication devices, the method comprising:
operating a server system to store domain data defining a **plurality of domains, each domain representing a different subset of a plurality of wireless services subscribers, wherein each said subset of the plurality of wireless services subscribers includes more than one wireless services subscriber, wherein each of the domains further represents a billing relationship between a business entity and the corresponding subset of the plurality of wireless services subscribers, and wherein the plurality of domains further represent a partitioning of content designed for use in**

wireless communication devices for purposes of making the content available to the wireless services subscribers;

operating the server system to enable a plurality of content suppliers to publish on the server system content designed for use in wireless communication devices via a computer network such that the content is accessible to the plurality of wireless services subscribers; and
operating the server system to enable wireless services subscribers in each of the plurality of domains to acquire the content via at least one wireless network and to use the acquired content on associated wireless communication devices. (Emphasis added).

Ellipsus not disclose or suggest such a method. In particular, Ellipsus does not disclose, suggest or even remotely hint at operating a server system to store domain data defining *a plurality of domains*, where each domain represents a different subset of a plurality of wireless services subscribers, wherein each said subset of the plurality of wireless services subscribers includes more than one wireless services subscriber, *wherein each of the domains further represents a billing relationship between a business entity and the corresponding subset of the plurality of wireless services subscribers, and wherein the plurality of domains further represent a partitioning of content designed for use in wireless communication devices for purposes of making the content available to the wireless services subscribers.*

An example of an implementation “domains” with the characteristics recited in Applicants’ claims is described in paragraphs [0029] through [0038] of Applicants’ specification, particularly in paragraphs [0032] and [0033].

In the present and previous Office Actions, the Examiner has relied upon a block diagram in the Ellipsus reference (page 3), asserting that it discloses (explicitly or inherently) all of the limitations of Applicants’ claims. To identify the disclosures in

Ellipsus that allegedly read on Applicants' claim limitations, the Examiner has done essentially nothing more than mention the names of certain blocks in the block diagram, which have no apparent relevance (as far as Applicants can see) to the claim limitations in question. Those bare, unsupported assertions by Examiner clearly do not even amount to a *prima facie* case of anticipation or obviousness. The Examiner's assertions are completely without merit.

Furthermore, Applicants have, in their prior responses and above, *clearly* pointed out the patentable distinctions between their claims and the cited art (see Amendment filed on 9/30/05, pp. 12-16; and Response filed on 2/21/2006, last three lines of p. 3 through first two lines of p. 4). Yet the Examiner has challenged the form of Applicants' responses as being insufficient. Applicants respectfully disagree. Nonetheless, Applicants will attempt to be more specific in discussing the Examiner's rationale for the rejection.

First, though, some background regarding the cited Ellipsus reference may also be helpful. As previously mentioned, at least one of the co-inventors of the present application is the author (or *an* author) of the Ellipsus reference. The company Ellipsus Systems was acquired by the assignee of the present application, Openwave Systems Inc., after the Ellipsus reference was published. At least two of the inventors of the present application were employees of Ellipsus Systems closely involved with the technology disclosed in the Ellipsus reference ("the Ellipsus technology"), prior to becoming employees of Openwave Systems Inc. Applicants, therefore, are thoroughly familiar with the Ellipsus technology and the extent of the Ellipsus reference's disclosure. The present invention, as claimed, resulted from development, at

Openwave Systems Inc., of technology representing a significant improvement upon the Ellipsus technology.

The Examiner cites the Context manager on page 3 of Ellipsus as allegedly satisfying the claim limitation, “the plurality of domains further represent a partitioning of content designed for use in wireless communication devices for purposes of making the content available to the wireless services subscribers”. Applicants respectfully submit that there is no hint of this claim limitation in the Context manager or elsewhere in the Ellipsus reference. (Note that “context” in the Ellipsus reference means dynamic information about a subscriber, such as location, availability, etc.)

Near the bottom of page 3 of Ellipsus, there is an explanation of the Context manager, stating, “The user may subscribe to only certain topics from those made available, for example.” However, that language merely refers to a *per-subscriber* topic subscription, which determines which topics a particular user receives, as determined by that user’s preferences. Each subscription applies to a *single* subscriber and does *not* apply to or include a *plurality* of subscribers, in contrast with each “domain” in Applicants’ claims. Furthermore, a subscription such as referred to on page 3 of Ellipsus is *not* related to any domain, of a plurality of domains, which *each* represent a *plurality* of subscribers, *and* which *each* represent a *billing relationship* between a business entity and the corresponding subset of the plurality of wireless services subscriber, per Applicants’ claim language.

The Examiner further cites the Billing System on page 3 of Ellipsus regarding the claim limitation, “*wherein each of the domains further represents a billing relationship between a business entity and the corresponding subset of the plurality of wireless*

services subscribers". However, the Examiner has not explained how the Billing System in Ellipsus relates to any domains that have the characteristics discussed in the preceding paragraph and above. Indeed, the Billing System in Ellipsus does *not* include, involve or relate to any domains that have such characteristics.

Hence, the above-mentioned features of Applicants' claims are not disclosed or even suggested in the cited art. Furthermore, these claim features would not be obvious based on the cited art, particularly within the context of the overall *combination* of claim features. There is no suggestion or motivation in Ellipsus, either alone or in combination with the prior art in general, to provide the claim features emphasized above in combination.

All of the pending independent claims include essentially the limitations emphasized above. Therefore, all pending claims are patentable over the cited art.

Response to Examiner's comments in Final Office Action dated 5/5/2006

The Examiner responds to Applicants most recent arguments on pages 13-14 of the Final Office Action. Specifically, the Examiner states:

14. The Examiner disagrees. First, the rejection clearly indicates each and every limitation recited in the claims. However, the response (and the incorporated previous response) does not indicate how or where the rejection or the reference is missing the indicated claim language. Therefore, Applicants have not in fact met their burden. Perhaps, the use of the term "why" was an inappropriate one, but the point is the same, Applicants must indicate, using the claims, the rejection and the reference exactly where and how there [*sic*] invention is patentable over the cited art. As Applicants themselves recognize, they are required to "point out one or more claim limitations that *the cited reference* fails to

disclose,” (page 5 of current response) **which requires that you in fact cite to the reference**. In addition, as Applicants make very clear in the current response, they have one of the authors in their employ (see page 6 of the current response), therefore, it would seem reasonable to the examiner that if the Applicants have the information regarding the reference in the currently claimed invention, and they understand the differences, then why not clearly point them out and explain them using the reference in the claims. (Final Office Action, p. 14)(emphasis added and original).

Applicants’ response is that it is *not possible* to specifically point to the *absence* of something (e.g., certain disclosure) in a reference, beyond simply stating what is absent; that is basic logic. Consequently, Applicants do not see how it is possible to cite to Ellipsus in greater detail than they have already done (at least not without more specific rejections from the Examiner), given that Applicants’ whole point is that the reference *fails to disclose* certain claim limitations. Furthermore, since the Examiner has made only the most-general references to the disclosure in Ellipsus and relied upon unsupported assertions of inherency, Applicants have *no duty* to discuss the cited reference in any greater detail than they have already done, assuming *arguendo* that is possible. It is the Examiner who bears the burden of establishing a *prima facie* basis for a rejection, and Applicants respectfully submit that the Examiner clearly has failed to do so.

In response to the Examiner’s comment about the Applicants having one of the authors of Ellipsus in their employ (top of p. 14 of Final Office Action), Applicants submit that the Examiner misread Applicants’ previous remarks. Applicants clearly stated that said individuals are *no longer* employees of Openwave Systems (the assignee of the present application) (see Response filed on 2/21/2006, p. 3). Consequently, it is at

least very inconvenient to have any of said individuals participate in an interview with the Examiner.

Regarding paragraph “15” (page 14) of the present Office Action, Applicants appreciate the Examiner’s clarification of the assertion of inherency. Regardless of whether Ellipsus inherently discloses a “plurality of domains”, however (which Applicants do not concede), Applicants respectfully submit that there still is no disclosure or suggestion of a plurality of domains *which have all of the above-mentioned characteristics*, as recited in Applicants’ independent claims.

The Examiner further states:

16. The examiner understands that Applicants do not agree with the above, however, without further evidence, a statement by a representative of the Applicants’ [sic] in a response that one of the co-inventors is an author of the cited reference and that the co-inventor submits that the claimed invention is different than the reference, thus rejection should be withdrawn, is simply not sufficient.

First, it is *not only* the position the mentioned *co-inventor/author* that the claimed invention is different from the reference; that is *Applicants’* position. Furthermore, Applicants are not relying *merely* upon a statement to that effect by Applicants’ representative; Applicants have explained *in detail*, in this response and in prior responses, *which limitations* are not shown in the cited reference and *why* they believe the Examiner’s position is unsupportable.

For all of the reasons mentioned above (and in prior responses), therefore, all pending claims are believed to be patentable over the cited art.

Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Conclusion

For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

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